

Message Text

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ORIGIN L-03

INFO OCT-01 EUR-25 NEA-10 IO-13 ISO-00 CAB-09 CIAE-00

COME-00 DODE-00 EB-11 INR-10 NSAE-00 RSC-01 FAA-00

SSO-00 NSCE-00 USIE-00 INRE-00 PM-07 H-03 NSC-10

PA-03 PRS-01 SPC-03 SS-15 ACDA-19 OIC-04 SCA-01 A-01

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E.O. 11652: GDS

TAGS: ICAO, ETRN

SUBJECT: ICAO AIR SECURITY CONFERENCE: SOVIET PROTOCOL

REFS: (A) ROME 9349

(B) ROME 9354

(C) STATE 176035

MONTREAL FOR US REP ICAO

1. IN EXCHANGE FOR SOVIET SUPPORT FOR U.S. PROPOSALS ON
INDEPENDENT CONVENTION, DEL MAY SUPPORT WITHOUT MODIFICA-
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TION SECOND REDRAFT OF SOVIET PROTOCOL REPORTED REFTL (A).

WE DO NOT DEEM IT NECESSARY FOR US DEL TO OBTAIN FURTHER AMENDMENT IF OUR UNDERSTANDING OF ITS MEANING DESCRIBED PARA. 2 IS ACCURATE. DEL SHOULD BE CAUTIOUS TO ASSURE THAT AN INDEPENDENT CONVENTION AS WELL AS SOVIET PROTOCOL EMERGE FROM CONFERENCE AND NOT LATTER ALONE. WE HAVE SOME FEAR THAT AN EMERGING CONSENSUS ON LATTER, WITHOUT EVIDENCE OF SAME FOR FORMER, COULD ENHANCE UNSATISFACTORY RESULT THAT PROTOCOL WOULD BE THE ONLY PRODUCT OF THE CONFERENCE, EFFORTS TO PRODUCE INDEPENDENT CONVENTION SLACKENING SINCE DELEGATIONS COULD POINT TO A POSITIVE RESULT OF CONFERENCE REPRESENTED BY ADOPTION SOVIET PROPOSAL ALONE.

2. WE DO NOT PRECISELY UNDERSTAND INTENDED MEANING OF "GIVE PREFERENCE TO" IN PARAGRAPH A. PARAS 1 AND 2 OF

REFTEL (B) DO NOT CONVEY ANY MEANING TO US. WITH RESPECT TO POINT B IN PARA 1, WE DO NOT FIND A BASIS FOR THIS CONCLUSION ANYWHERE IN LANGUAGE OF THE PROPOSAL. "GIVE PREFERENCE TO," IN CONTEXT OF ARTICLES 7 AND 8 OF HAGUE AND MONTREAL, APPEARS TO BE MANDATORY REQUIREMENT TO EXTRADITE RATHER THAN PROSECUTE, EXCEPT WHERE NATIONAL OF REQUESTED STATE IS INVOLVED OR WHERE CONTRARY TO NATIONAL LAW AND ITS PRACTICE. WE DO NOT BELIEVE THIS CONCLUSION IS ONLY ONE CAPABLE OF BEING DRAWN FROM LANGUAGE, BUT IN ABSENCE OF A LEGISLATIVE HISTORY CONTRIBUTED BY THOSE DELEGATIONS MAKING STATEMENTS ON THE RECORD WHO MIGHT BE INTERESTED IN CLARIFYING CONTENT OF THE LANGUAGE, WE BELIEVE IT IS MOST LOGICAL INTERPRETATION. SUCH STATEMENTS BY THOSE DELEGATIONS COULD THUS SERVE A USEFUL PURPOSE IF DIFFERENT MEANING IS INTENDED. EVEN IT IT IS REGARDED AS IMPOSING MANDATORY OBLIGATION TO EXTRADITE, REFERENCE TO "NATIONAL LAW AND ITS PRACTICE" ADEQUATELY MEETS CONCERNS WE EXPRESSED IN REFTEL (C). AS WE UNDERSTAND FROM PARA 3 REFTEL (B), POINTS RAISED REFTEL (C) ARE PRECISELY THE REASON FOR INSERTION OF THIS LANGUAGE. WE ASSUME LEGISLATIVE RECORD WILL EVIDENCE SUBSTANTIVE CONTENT OF THIS PHRASE, INCLUDING APPROPRIATE STATEMENT BY US DEL. OUR CURRENT THINKING IS THAT STATEMENT BY U.S. SHOULD BE MADE AT LIMITED OFFICIAL USE

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FINAL SESSION OF CONFERENCE, OR AT SIGNING. DEPT WILL WISH TO REVIEW STATEMENT PRIOR TO DELIVERY. REASON FOR WITHHOLDING STATEMENT AT THIS STAGE IS SO DEBATE ON PROTOCOL MAY BE EVALUATED IN DETERMINING WHAT SHOULD BE ITS CONTENT AND NATURE. WE ALSO RECOGNIZE THAT DEVELOPMENTS AT CONFERENCE MAY MOOT CONSIDERATION OF SUBJECT. WITH REFERENCE TO PARA 8 REFTEL (B), WE WOULD NOT WISH MAKE FIRM CONCLUSION NOW THAT ENABLING LEGISLATION WOULD

BE NECESSARY. ON THE CONTRARY, OUR UNDERSTANDING OF THE PHRASE "LAW AND ITS PRACTICE" IS THAT OUR PRACTICE ON REFUGEES WOULD BE COVERED AS EXCLUSION IN SAME WAY AS EXCLUSION BASED ON EXPLICIT MENTION OF NATIONALITY. IMPLEMENTING LEGISLATION MIGHT BE USEFUL FOR CLARITY, BUT WE WOULD NOT WISH TO CROSS THAT BRIDGE NOW.

3. WE VIEW (B) AS MAKING PROTOCOL A FORM OF MULTILATERAL EXTRADITION TREATY FOR PURPOSES OF HAGUE AND MONTREAL OFFENSES.

4. WE DO NOT UNDERSTAND POINTS DEL IS MAKING IN PARAS 4, 5, 6, AND 7 OF REFTEL (B). RUSH

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